

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA Application No. 13133, of Thomas J. O'Donnell, pursuant to Sub-section 8207.2 and Paragraph 8207.11 of the Zoning Regulations, for a special exception under Paragraph 3105.42 to use all floors of the subject premises as an apartment house consisting of seven units and for a variance from the parking requirements (Sub-section 7202.1) in an R-5-A District at the premises 406 Condon Terrace, S. E., (Square 6154, Lots 25, 26 and 27).

HEARING DATE: January 16, 1980

DECISION DATE: February 6, 1980

FINDINGS OF FACT:

1. The subject property is located in an R-5-A District on the north side of the intersection of Condon Terrace, and 4th Streets, S. E.

2. Because Condon Terrace meets 4th Street at an angle, the lot is triangular in shape. It is bounded on its north side by a fifteen foot wide public alley. The area of the lot is 9180 square feet.

3. The subject property is improved with a three story plus basement free standing, brick building. The building was constructed in 1953, and originally contained fourteen apartment units.

4. In 1972, the building was converted to a halfway house, first operated under contract with the District Government, and later operated directly by the D. C. Government. Certificate of Occupancy No. B-83882, issued on December 8, 1972, authorized the use as a halfway house with a maximum of fifty-five residents on all floors.

5. The applicant now proposes to use the building as an apartment house containing seven units. There would be two units on each floor, plus one unit in the basement. Where the original apartment configuration was for one and two bedroom units, the proposed use would be fewer but larger units.

6. Since the prior use was not as a multiple dwelling, the applicant requires a special exception under Paragraph 3105.42 even though no new construction is proposed.

7. The subject site is surrounded predominantly by garden apartment projects, with buildings of similar size and scale to the subject building. The Board finds that the proposed use is consistent with the predominant existing use in the area.

8. The building is ideally suited for use as an apartment house, since it was originally constructed for that purpose. The reduction in the number of units and increase in the size of the units fills a need for such units in the District of Columbia.

9. On December 4, 1979, the application was referred to the Board of Education, the Departments of Transportation and Housing and Community Development and the Office of Planning Development. By memorandum dated January 23, 1980, the Superintendent of Schools reported that he had no objection to the application, because there will be no impact upon school facilities in the area. There were no reports received in the record from any of the other agencies.

10. The Chief of the Zoning Review Branch, in denying an application for a Certificate of Occupancy to use the premises as an apartment house of seven units, ruled that six off-street parking spaces are required. The applicant testified that seven spaces are required. The Board finds no reason to doubt the Chief of the Zoning Review Branch and finds that six spaces are required.

11. The applicant, by statement marked as Exhibit No. 17-E of the record, testified that there are three parking spaces located at the rear of the building, which are accessible from a driveway from 4th Street. The applicant therefore requires a variance of the three remaining spaces.

12. Because of the triangular shape of the site, and because of the topography, which slopes down from front to rear, it is not possible to locate the three additional required parking spaces on the lots.

13. The applicant testified that none of the present tenants in the building owns a car. In addition, there appears to be available on-street parking in the area.

14. The applicant testified that the building is already being used as the application proposes. The applicant testified that he had been advised by an official of the District Government that he could use the building as an apartment house, and that the previous use would provide a credit of seven parking spaces. The applicant testified that he therefore believed that the use was permitted, that he filed an application for a Certificate of Occupancy and that after a housing inspector had approved the use of the building, tenants were moved in. It was not until two months later that the Certificate of Occupancy was denied on zoning grounds, and the variance application was then filed.

15. The Board finds that, even though the use of the premises without proper approval is a violation of the Zoning Regulations, the applicant has not deliberately and maliciously violated the Regulations.

16. Advisory Neighborhood Commission 8-D, by letter dated January 21, 1980, recommended that the variance be granted. The ANC reported that the consensus of the present tenants of the building was in favor of the application. The ANC further reported that the additional parking is not necessary since most of the tenants do not own cars.

17. There was no opposition to the application.

CONCLUSIONS OF LAW AND OPINION:

The Board concludes that the applicant has basically complied with the requirements of Paragraph 3105.42, so as to be able to receive a special exception. The proposed use is compatible with the neighborhood in which it is located. The building is presently suitable for use as an apartment house. The proposed use further represents a decrease in intensity of use of the premises, as compared to the former uses. For all these reasons, the Board concludes that the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Maps, and will not tend to affect adversely the use of neighboring property in accordance with said Regulations and Maps.

As to the requested variance, the Board concludes that the variance is an area variance, the granting of which requires the showing of an exceptional or extraordinary condition of the property which creates a practical difficulty for the owner. The Board concludes that the shape and topography of the lot effectively preclude the provision of the required number of

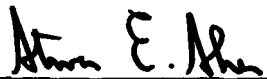
off-street parking spaces on the lot . Denial of the variance would preclude use of the property as proposed, thus creating a practical difficulty for the owner. The Board concludes that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Maps.

The Board concludes that it has accorded to the Advisory Neighborhood Commission the "great weight" to which it is entitled. It is therefore ordered that the application be granted.

VOTE: 4-0 (William F. McIntosh, Connie Fortune and Leonard L. McCants to grant; John G. Parsons to grant by proxy, Charles R. Norris not present, not voting).

BY ORDER OF THE D. C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: 24 MAR 1980

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF LICENSES, INVESTIGATIONS, AND INSPECTIONS.

UNDER SUB SECTION 8204.3 OF THE ZONING REGULATIONS "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."